THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.17117 OF 2005

DATE: 09-08-2005

Between:

M/s. R.K. Mineral Waters,

Rep. by its Partner S. Rama Mohan

Gudipallipadu village,

Indukurpet Mandal, Nellore District.

.. Petitioner

AND

The District Level Committee

Rep. by District Collector, Nellore District,

Nellore & three others

.. Respondents

THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO. 17117 OF 2005

ORDER: (Per Sri B.Sudershan Reddy, J)

The writ petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India mainly challenging the notice issued by the 2nd respondent in G.I.23985/2005-06, dated 26.07.2005 demanding payment of tax of Rs.5,44,236/- being tax holiday availed by the petitioner during the period from 01.04.2002 to 31.03.2005 on the ground that the tax holiday incentive was cancelled by the 3rd respondent by his letter No.758/G/2005 dated 15.06.2004 as illegal and arbitrary.

The petitioner is a manufacturer of packaged drinking water. Relying on the scheme of industrial incentives in Target 2000 contained in G.O.Ms.No.108, dated 20.05.1996, petitioner contends that manufacturing of packaged drinking water does not find place in the list of ineligible industries annexed to the said G.O. The 1st respondent-District Level Committee sanctioned incentives on 05.03.1999 and issued Final Eligibility Certificate granting sales tax exemption for a sum of Rs.12,21,750/- being 135% of the fixed capital investment.

The 4th respondent cancelled the incentives granted to mineral water manufacturing units with effect from 30.03.2000. That a batch of writ petitions in Writ Petition

No.14099 of 2000 and batch were filed in this Court, including by the petitioner. The said batch of writ petitions were allowed by order dated 04.08.2000 directing the 4th respondent to consider the representations filed by the petitioner and other similarly situated manufacturers before cancellation of the eligibility certificates. Thereafter, the 3rd respondent issued show cause notice dated 18.09.2000 to the petitioner to show cause as to why the Final Eligibility Certificate issued on 05.09.1999 should not be cancelled.

Representations were made by the petitioner and other similarly situated manufacturers. The Commissioner of Industries vide order dated 08.04.2003 cancelled the Final Eligibility Certificate issued to the petitioner's manufacturing unit and other similar manufacturing units.

The contention raised in the writ petition is that the proceedings of the Commissioner of Industries were not communicated to the petitioner, and therefore, the petitioner could not question the same. In the meanwhile, the 2nd respondent herein issued the demand notice dated 26.07.2005 on the sole ground of cancellation of the Final Eligibility Certificate issued to the petitioner unit as early as on 05.03.1999.

In order to satisfy ourselves as to whether the decision taken by the Commissioner of Industries has been communicated and served upon the petitioner, we have summoned the records, which are made available for our perusal by the learned Government Pleader for Industries. We have perused the records. Interestingly, the proceedings of the Commissioner of Industries dated 08.04.2003 are not even marked to the petitioner. The proceedings are marked to the General Manager, District Industries Centre. There is no acknowledgment of the petitioner having received the proceedings dated 08.04.2003. Valuable rights conferred upon the petitioner under the Final Eligibility Certificate dated 05.03.1999 cannot be taken

away by the respondents in such an arbitrary manner. Obviously, the order dated 8.04.2003 cannot be referred, unless the same is properly communicated to the petitioner. The whole cause for issuing notice by the 2nd respondent is based on the impugned proceedings dated 08.04.2003, which cannot be given effect to, so far as the petitioner is concerned, since the same has not been served upon the petitioner. In the circumstances, the 2nd respondent is directed not to proceed further pursuant to the impugned demand notice dated 26.07.2005 requiring the petitioner to pay the specified sum of tax.

Accordingly, the writ petition is disposed of directing the 4th respondent herein to communicate the proceedings dated 08.04.2003 to the petitioner in accordance with law. The remedies of the petitioner to challenge the said proceedings dated 08.04.2003 after its service are left open and it is entitled to challenge the same, if it is so advised. We must clarify that we have not expressed any opinion, whatsoever, as regards the validity or otherwise of the proceedings dated 08.04.2003 of the Commissioner of Industries. The 2nd respondent cannot proceed further against the petitioner pursuant to the impugned demand notice dated 26.07.2005. The demand notice is accordingly set aside with a liberty granted to the 2nd respondent to proceed further, in accordance with law, after the order passed by the 4th respondent is duly communicated to the petitioner. No costs.

_____

B. SUDERSHAN REDDY, J

Date: 09.08.2005

_____

RAMESH RANGANATHAN, J

MRKR/MVB